

**PT 05-37**

**Tax Type: Property Tax**

**Issue: Charitable Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**UNITED LEGAL FOUNDATION,**

Applicant

v.

**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

**No. 04-PT-0044  
(02-16-2967)**

**PINS: 20-25-124-010  
20-25-124-011  
20-25-124-012  
20-25-124-013  
20-25-124-014**

**Ted Sherrod  
Administrative Law  
Judge**

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Special Assistant Attorney General John Alshuler on behalf of the Illinois Department of Revenue; Rufus Cook, Esq., of Cook & Revak, Ltd. on behalf of United Legal Foundation.

**Synopsis:**

This matter raises the issue of whether Cook County Parcel Index Numbers 20-25-124-010 through 20-25-124-014 (hereinafter the “subject property”) should be exempt from 2002 real estate taxes under section 15-65 of the Property Tax Code, 35 ILCS 200/15-65. The controversy arose as follows. On May 14, 2003, United Legal Foundation (“Applicant”) filed a Property Tax Exemption Complaint with the Cook County Board of Review (“Board”). The Board reviewed the Applicant’s complaint and

on June 11, 2003, recommended that the exemption be denied. On April 1, 2004, the Illinois Department of Revenue accepted the Board's recommendation and denied the exemption concluding that the subject property was not in exempt ownership or exempt use. The Applicant timely appealed from the Department's denial of exemption. On June 28, 2005, a formal administrative hearing was held at which evidence was presented. Following a careful review of all of the evidence, it is recommended that the subject property not be exempt from 2002 real estate taxes.

**Findings of Fact:**

1. The position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that the parcel here in issue and the building thereon, did not qualify for exemption during the 2002 assessment year, was established by the admission in evidence of the Department's Group Exhibit number 1. Department ("Dept.") Group Exhibit ("Ex.") 1.<sup>1</sup>
2. The Applicant is a not-for-profit corporation that was organized on July 24, 1979. (Tr. p. 51; Applicant Ex. 2 (Articles of Incorporation); Applicant Ex. 3 (C-2)). Its Articles of Incorporation provide that its purpose is "[T]o engage in nonpartisan legal research, study and analysis for the benefit of the general public as to the effect of evolving concepts of the law on our democratic institutions, with respect to both the public and private sectors[.] ... [T]o provide legal representation and to assist other organizations in providing legal representation for the citizens of the United States of America, corporate or individual, on matters of public interest for all levels of the

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<sup>1</sup> Unless otherwise noted, findings of fact apply to the tax year 2002.

judicial process[.]” and “[T]o conduct and sponsor forums, lectures, debates and similar programs ... [.]” Tr. pp. 52, 53; Applicant Group Ex. 2 (Articles of Incorporation). These Articles further provide that “[N]o part of the net income of the corporation shall inure to the benefit of or be distributable to its directors, officers, members or other private persons.” Applicant Group Ex. 2 (Articles of Incorporation).

3. In pursuit of its stated objectives, Applicant has conducted education and engaged in litigation focusing on two major areas: i) fair credit practices; and ii) real estate tax equity. Tr. p. 62.
4. Applicant acquired the subject property, which is also known as the Ridgeland Club (Tr. pp. 14, 34) and which is located at 7330-48 South Ridgeland Avenue, Chicago, Illinois (Tr. pp. 14, 21, 24, 44, 48, 49; Applicant Group Ex. 2 (Real Estate Exemption Complaint)), from the Elijah Muhammad Foundation by a Quit Claim Deed which was recorded with the Cook County Recorder on October 9, 1992. Applicant Group Ex. 2 (Quit Claim Deed). Located on the subject property, which encompasses approximately 2 acres, is a two story building with basement, consisting of approximately 27,000 square feet. Tr. pp. 25, 26, 54. Immediately to the south of the building on the subject property, there is a parking lot. Applicant Ex. 2 (property diagrams).
5. Applicant purchased the subject property with the intent to renovate it and use it as a banquet and conference facility, meeting hall and community center. Tr. pp. 26, 31, 32, 42, 43. Subsequent to its renovation, the first floor and basement were used for these purposes, and made available to the public. Tr. pp. 26, 27, 55-57.

6. The Applicant's by-laws provide that the Applicant shall have both organizations and individuals as members, but do not provide for the issuance of capital stock or for shareholders. Applicant Group Ex. 2 (By-Laws). Members are elected by the Board of Directors; an "affirmative vote of two thirds of the directors" is required for election. *Id.* Members must pay dues to remain in good standing unless this requirement is "waived for good cause by the Board of Directors." Applicant Group Ex. 2 (Articles of Incorporation).
7. The Applicant has been exempt from federal income taxes under section 501(c)(3) of the Internal Revenue Code since August 21, 1980. Tr. pp. 59, 60; Applicant Group Ex. 2 (IRS letter dated 8/21/80).
8. At the time the subject property was purchased, it was in a state of complete disrepair. Tr. pp. 14, 15, 24-26, 30. Subsequent to being purchased, a complete renovation of the subject property was undertaken, including the installation of central heating and air conditioning. Tr. pp. 30, 31, 102, 103, 106, 107. Rufus Cook, an incorporator and founding director of the Applicant, provided some of the money used for the renovation of the subject property. Tr. pp. 29, 30, 44. Renovation of the subject property began in 1992 and was completed in 1995. Tr. p. 24.
9. The building portion of the subject property consists of a 27,000 square foot two story brick structure and basement (a total of three levels), which contains a large auditorium or ballroom with stage on the first floor, running from north to south along the east wall of the building, that is capable of accommodating up to 330 people. Tr. pp. 25, 26, 54-56; Applicant Group Ex. 2 (property diagrams). Along the west side of the building, on the first floor, there are 5 rooms, each running from

north to south, two of which are across from the foyer or lobby located at the far north end of the building. Applicant Group Ex. 2 (property diagrams). The middle of these rooms is a small service kitchen used for heating light refreshments and from which these items can conveniently be served to either the auditorium/ballroom or to any of the adjacent rooms along the west wall. *Id.*; Tr. p. 56. The other rooms along the west wall are used for meetings and small functions. Tr. pp. 57, 106, 107. First floor public rest room facilities are also situated near the middle of the first floor along the west wall. Applicant Group Ex. 2 (property diagrams). A hallway separates the rooms on the west side of the first floor of the subject property from the auditorium. *Id.* The basement contains two bars, rest room facilities, a large, commercial kitchen (including a chef's office, food preparation areas, and walk-in coolers), a laundry facility, storage space and room for mechanical equipment used to run the facility. *Id.*; Tr. pp. 26, 58, 59, 108.

10. The second floor of the subject property, consisting of several offices, a small conference room and adjacent storage areas, is occupied by the Applicant, United Legal Foundation, and is used as its administrative offices. Tr. pp. 21, 27; Applicant Ex. 2 (property diagrams).
11. The Ridgeland Corporation was organized as an Illinois "for profit" corporation on June 21, 1994. Tr. p. 46; Applicant Group Ex. 3 (C-2). It is classified as a Subchapter S corporation for federal income tax purposes. Applicant Group Ex. 3 (C-2); Tr. p. 111. Rufus Cook, a resident of Chicago, Illinois, is the President and sole shareholder of this corporation. Tr. p. 89; Group Ex. 3 (C-2). This corporation was organized to maintain necessary licenses (including a liquor license), deal with other requirements

of managing the auditorium or ballroom, meeting room and other facilities of the subject property as a venue for serving the public and to insulate the Applicant from liability exposure attendant with the maintenance of a facility where liquor is sold. Tr. pp. 75, 77, 86, 88 – 90; Applicant Group Ex. 3 (C-1), (C-2). The Ridgeland Corporation has not attempted to qualify for exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code. Tr. pp. 87, 88.

**12.** On September 26, 1996, the Applicant entered into a License, Rental and Management Agreement (“License Agreement”) with the Ridgeland Corporation for the use of the basement and ground level of the subject property and to “operate and rent the same to the public in the [Ridgeland] Corporation’s own name, consistent with the policies set forth” by the Applicant’s Board of Directors. Applicant Group Ex. 3 (C-2). The initial term of the License Agreement was from October 1, 1996 to October 1, 1999, with the lease to “automatically be renewed on October 1 of each successive three-year period unless cancelled by either party.” *Id.* Pursuant to this agreement, all profits (receipts less expenses) of the Ridgeland Corporation must be paid to the Applicant for use by the Applicant “for the [Applicant’s] expenses of operation and charitable purposes.” *Id.*; Tr. pp. 78, 84-87. The lease agreement also requires the Ridgeland Corporation to submit to the Applicant periodic reports “as required by the [Applicant]” reflecting the income and expenses of the Ridgeland Corporation. Tr. pp. 85, 86.

**13.** Pursuant to resolutions adopted by the Applicant’s Board of Directors on September 25, 1996, fees for rental of the ballroom, meeting rooms and/or and other facilities of the subject property are required to be waived by the Ridgeland Corporation as

instructed by the Applicant. Tr. pp. 68, 79; Applicant Group Ex. 3 (C-1). Pursuant to this resolution, the Applicant is authorized to instruct the Ridgeland Corporation to lease the meeting rooms, auditorium or ballroom and other public facilities located in the subject property for no fee, or at a reduced fee, to: i) churches and religious organizations; ii) 501(c)(3) charities and other non-profit entities; iii) fraternities, sororities and not-for-profit social organizations; iv) business leagues, chambers of commerce or community improvement groups; and v) needy individuals, families or groups. Applicant Group Ex. 3 (C-1).

- 14.** In accordance with the Resolution adopted by the Applicant's Board on September 26, 1996, and by virtue of the Board's application of standards for qualifying for fee waivers enumerated therein, during 2002 the Burnside Community Baptist Church, First Step Basketball League, Chicago Career Education Association, Oakdale Christian Academy, ABJ "Hooked on Kids", Alpha Phi Alpha Fraternity, the Chicago Tougaloo Alumni Association and the Woodlawn Organization all used the subject property's auditorium, meeting and other facilities located on the subject property's basement and first floor at no charge. Tr. pp. 91–101; Applicant Group Ex. 3(D). The subject property was also rented for wedding receptions, birthday and holiday parties, and family gatherings. *Id.* When these facilities were rented for such events, the charge for the auditorium or ballroom was from \$1,500 to \$1,800, the charge for the auxiliary meeting rooms was \$175 to \$700, and the charge for the basement area bars was from \$600 to \$1,200. Applicant Group Ex. 3 (F). Groups also were allowed to rent the entire facility including the ballroom and all meeting rooms and bars for \$3,000 to \$3,850. *Id.*

15. Applicant received no donations or other income during 2002. Expenses for the year totaled \$8,200 to cover gas and utilities. Applicant Group Ex. 3 (A-1). The Applicant had no paid employees during 2002. *Id.* While the Ridgeland Corporation had gross receipts of \$65,000 in 2002, its expenses for the conduct of events totaled \$82,000 resulting in a net loss from its facilities rental and related operations for the year of \$17,000. Applicant Group Ex. 3 (A-2).
16. During 2002, the Ridgeland Corporation had a loss from the rental and maintenance of the subject property of \$30,000. *Id.* This corporation has never generated a profit from its operations. Tr. p. 112.

### **Conclusions of Law:**

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemption permitted by the constitution or grant exemptions other than those the constitution authorizes. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not, in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limitations imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation



and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1<sup>st</sup> Dist. 1983).

In accordance with its constitutional authority, the General Assembly has enacted section 15-65 of the Property Tax Code, which exempts all property which is both: (1) owned by “[I]nstitutions of public charity” and (2) “actually and exclusively used for charitable or beneficent purposes” (35 **ILCS** 200/15-65). Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149 (1968) (hereinafter “Methodist Old Peoples Home”). Specifically, this provision states in part as follows:

Charitable purposes. All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to a profit:  
(a) Institutions of public charity.  
35 **ILCS** 200/15-65

In the instant case, the Applicant, a federally tax exempt organization engaged in education and litigation addressing housing discrimination, argues that the subject property is entitled to a charitable exemption pursuant to 35 **ILCS** 200/15-65. In accord with the aforementioned statutory directive, a charitable exemption will be granted to the Applicant if it shows that the property in question is owned by an entity that qualifies as an “institution of public charity” and is used primarily for charitable purposes. American College of Surgeons v. Korzen, 36 Ill. 2d 340 (1967); Institute of Gas Technology v. Department of Revenue, 289 Ill. App. 3d 779 (1<sup>st</sup> Dist. 1997).

Statutory provisions granting tax exemptions must be construed strictly and must come not only within the terms of the statute but also the authority given by the constitution. The burden of proving or establishing a right to an exemption rests upon the

party seeking the right to exemption. Rogers Park Post No. 108, American Legion v. Brenza, 8 Ill. 2d 286, 290 (1956).

Pursuant to the foregoing statutory directives and case law, determining whether the owner of the subject property is an institution of public charity is a two-step process. First, the owner of the subject property must be ascertained. Here, the record shows that the Applicant acquired the subject property from the Elijah Muhammad Foundation by Quit Claim Deed, which was recorded October 9, 1992, and a copy of the Quit Claim Deed pursuant to which title was obtained is contained in the record. Applicant Group Ex. 2 (Quit Claim Deed). I find this evidence sufficient to establish that the Applicant is the owner, for tax purposes, of the subject property.

Having established that the Applicant owns the subject property, the next step is to determine whether the Applicant is an institution of public charity. The Illinois courts have defined an “institution of public charity” as one that operates to benefit an indefinite number of people in a manner that persuades them to an educational or religious conviction that benefits their general welfare or otherwise relieves the burdens of government. Crerar v. Williams, 145 Ill. 625 (1893). In Methodist Old Peoples Home, the Illinois Supreme Court set forth six factors to be considered in assessing whether an organization is actually an institution of public charity. According to Methodist Old Peoples Home, institutions of public charity: (1) have no capital stock or shareholders; (2) earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters; (3) dispense charity to all who need and apply for it; (4) do not provide gain or profit in a private sense to any person connected with it; (5) do not appear to place

obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses; and (6) uses property it owns primarily for charitable purposes. Methodist Old Peoples Home, *supra* at 157.

These factors are not to be applied mechanically or technically. DuPage County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 469 (2<sup>nd</sup> Dist. 1995). Rather, they are to be balanced with an overall focus on whether, and to what extent, applicant primarily serves non-exempt interests, such as those of its own dues-paying members (Rogers Park Post No. 108, *supra*; Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3d Dist. 1987)), or operates primarily to lessen the State's burden. DuPage County Board of Review, *supra*; Randolph Street Gallery v. Department of Revenue, 315 Ill. App. 3d 1060 (1<sup>st</sup> Dist. 2000).

Applying the guidelines from Methodist Old Peoples Home, I conclude that the Applicant meets several of the criteria for determining whether it qualifies as a charity. One of the most important factors in determining if an organization is a charity is that the benefits it provides serve the public interest or in some way reduces the burden of government. *Id.*

To promote the general welfare, Congress has enacted the Community Reinvestment Act of 1977, 12 U.S.C.A. 2901-2907 (hereinafter "CRA"). The CRA promulgates procedures effectively mandating that insured depository institutions it covers meet the credit needs of low and moderate-income communities in which these institutions operate. See 12 C.F.R. §§ 345.11–345.45. One of the CRA's stated purposes is to police bank practices in such communities so as to prevent the exclusion of low-

income and disadvantaged neighborhoods from bank mortgages and other lending products and investment and financial services, a practice commonly referred to as “redlining.” See “Community Reinvestment Act Examination Procedures” (hereinafter “Examination Procedures”) published by the Comptroller of the Currency and the Administrator of National Banks at page 1 (“The CRA requires that each federal financial supervisory agency assess the record of each covered depository institution in helping to meet the credit needs of its entire community, including low-and moderate-income neighborhoods, consistent with safe and sound operations, and take that record into account when deciding whether to approve an application by the institution for a deposit facility[.]”). The purposes of the CRA are effectuated through bank regulatory agency evaluations of banking and financial institution applications for new branches or relocation of existing branches, bank mergers and consolidations and other corporate activities. To this end, the Office of the Comptroller of the Currency routinely conducts examinations and rates banks on their performance in meeting the CRA’s objectives.

The Comptroller of the Currency’s CRA examination procedures expressly provide for the participation of community groups to express their views about a financial institution’s CRA performance. See Examination Procedures, pp. 8-30. As a consequence of such community group activities, financial institutions are encouraged to address concerns raised by community groups so as to improve CRA ratings and increase the likelihood of favorable Comptroller of the Currency Approval of financial institution merger and other applications. In pursuit of the objectives set forth in its charter, the Applicant is an integral participant in these evaluation procedures and in negotiating with banks to obtain improvements in underserved community services by increasing bank

branches and other financial resources available to their residents, with the overall objective of protecting access to mortgage financing and home ownership. Tr. pp. 62-66; Applicant Group Ex. 2 (Bulletin).

Other activities engaged in by the Applicant also contribute to the achievement of this objective. These activities include filing lawsuits contesting local government and bank practices that the Applicant believes negatively impact home ownership opportunities available to the disadvantaged. Applicant Group Ex. 9. By engaging in activities that challenge discriminatory practices, and by enhancing community access to bank loans and financial products so as to implement the objectives of the CRA, the Applicant plainly serves the public interest.

The record is also devoid of any evidence that the Applicant has capital, capital stock or shareholders. Nor is there any evidence in the record that the Applicant provides gain or profit through the distribution of its earnings to any person connected with it. The absence of such attributes is corroborated by the Applicant's status as a 501(c)(3) corporation under the federal Internal Revenue Code. See 26 U.S.C.A. § 501(c)(3) (describing an exempt corporation pursuant to this section as one in which "no part of the net earnings ... inures to the benefit of any private shareholder or individual").

While the foregoing evidence clearly and convincingly supports the Applicant's claims, the record before me is deficient in a number of critical respects. The limited financial information provided shows expenses for 2002, but fails to indicate the source of revenues utilized to meet them. See Applicant Group Ex. 3 (A-1). The License Agreement with the Ridgeland Corporation, a for profit affiliated corporation established to operate the subject property, does provide that excess funds (revenues less expenses)

generated by this corporation are to be given to the Applicant for use in the pursuit of its charitable activities. Tr. pp. 78, 84-87; Applicant Group Ex. 3 (C-2). While there is also anecdotal testimony that Mr. Rufus Cook has provided or raised funds for the Applicant (Tr. pp. 29, 30, 44), the Applicant has provided no financials or other documentation to support this claim. Moreover, the record contains no evidence that any donations were made by Mr. Cook or anyone else in 2002, the tax year in controversy. Applicant Group Ex. 2 (Profit and Loss Statement). While the source of funding is far from a decisive factor in determining whether the Applicant is a charity (see Lutheran General Health Care System v. Department of Revenue, 231 Ill. App. 3d 652, 663, 664 (1<sup>st</sup> Dist. 1992)), this factor clearly must be taken into account in determining the Applicant's charitable status. Eden Retirement Center v. Department of Revenue, 213 Ill. 2d 273 (2004). However, in the absence of such evidence regarding the source of the Applicant's funds, it is impossible to determine whether the Applicant possesses the "common characteristic" of a charitable institution of deriving funds "mainly from public and private charity." Methodist Old Peoples Home at 157.

The absence of adequate financial information precludes other findings that must be taken into account in determining the merits of the Applicant's exemption claim. In Rogers Park Post No. 108, *supra*, the Illinois Supreme Court found it significant that the record before it contained no evidence of "any expenditures by plaintiff for charitable purposes." Rogers Park Post No. 108, *supra* at 291. See also Morton Temple, *supra* at 796. Moreover, in Albion Ruritan Club v. Department of Revenue, 209 Ill. App. 3d 914 (5<sup>th</sup> Dist. 1991), the court denied exempt status to an organization that spent approximately 69 percent of its gross receipts (\$3,009.10 out of \$4,332.62) on building

maintenance, insurance and other operational expenses. The court found such expenses indicative of the appellant's primary purposes, one of which, it concluded, was to "maintain its property ... [.]” Albion Ruritan Club, *supra* at 919. Here, the limited financial information that the Applicant has provided only shows disbursements in furtherance of its operating costs, namely payments made to cover the operation of utilities at its principal office which is housed in the property at issue in this case. Applicant Group Ex. 3 (A-1). The limited financial data fails to show any grants or other expenditures for legal or educational services constituting the Applicant's principal charitable purposes. See Applicant Group Ex. 2 (Articles of Incorporation). Absent additional financial evidence, it is impossible to determine whether the Applicant has one of the common characteristics of a charity, as illustrated by the Supreme Court's opinions in Methodist Old Peoples Home, *supra*, Rogers Park Post No. 108, *supra* and Albion Ruritan Club, *supra* of disbursing funds primarily to provide charitable grants and benefits.

The evidence presented contains other ambiguities that must be clarified in order to properly evaluate the Applicant's request for exemption. Specifically, the Articles of Incorporation of the Applicant provide in part as follows:

FOURTH: No part of the net income of the corporation shall inure to the benefit of or be distributable to its directors, officers, members, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for goods, services, property or interests in property of value, real and personal, and to make payments and distributions in furtherance of the purposes and objects set forth herein.

These by-laws plainly authorize the payment of fees for services performed by officers and members of the Applicant. However, the record before me does not indicate

whether, or how much the officers and members of the Applicant are paid for their legal or other services. The Applicant clearly would not qualify for exemption if it were determined that these amounts were so high that the organization's members or officers could be considered the primary beneficiaries of the Applicant's activities. Lutheran General Health Care, *supra* at 661, 662. Evidence addressing this area must be produced so as to allow the finder of fact to at least evaluate such considerations.

There is evidence in the record that the Applicant makes its ballroom and other facilities available without charge to certain types of organizations. The criteria used to determine whether fee waivers will be authorized to various types of community groups, charities and individuals are enumerated in a resolution adopted by the Applicant's Board of Directors on September 25, 1996. Applicant Group Ex. 3 (C-1). However, these standards are not mandatory, and are applied in the sole discretion of the Applicant's Directors. Tr. p. 68. Moreover, there is no evidence that any organizations that are not community groups or charities, or any individuals have ever received fee waivers based upon need. In the absence of such evidence, it is impossible to conclude that the Applicant's ballroom, meeting room and other facilities were made available to all who need and apply for their use, including organizations that are not community groups or charities, and individuals, lacking the ability to pay for them. Therefore, it is difficult to see how this characteristic of a charitable organization identified in Methodist Old Peoples Home has been shown with respect to the use of the subject property.

More importantly, there is absolutely nothing in the record to indicate how and to whom the Applicant decides to dispense its legal and educational services constituting its main reason for existence pursuant to its Articles of Incorporation. For example,



qualifications for such services are not spelled out in the record, and criteria for participation in such activities is not clear. Given this failure of proof, the finder of fact has no way of determining if the Applicant's principal services are available based strictly upon need. Accordingly, it is impossible to determine if the Applicant "makes its services available to all who need and would avail themselves" of them, or that the Applicant does not "place obstacles in the way of those who need and would avail themselves of the charitable benefits it dispenses", common characteristics of a charity as outlined in Methodist Old Peoples Home.

In sum, the record is sufficient for the finder of fact to conclude that the Applicant: (1) has no capital stock or shareholders and does not pay dividends to any of its members; and (2) engages in activities that promote the general welfare and serve the public interest.<sup>2</sup> However, based upon the evidence presented at the hearing, I cannot determine whether the Applicant derives funds from public or private charity. Old Methodist Peoples Home, *supra* at 157. Nor can I determine whether the Applicant's services "are available to all who need or would avail themselves of them", or that Applicant "places no obstacles of any character in the way of those who need and would avail themselves of its charitable benefits" or that the Applicant does not "provide gain or profit in a private sense to any person connected with it." *Id.* Moreover, for reasons enumerated below, I find that the Applicant has failed to prove that the primary purpose

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<sup>2</sup> The Applicant has also shown that it qualifies for exemption from Federal income taxes pursuant to Section 501(c)(3) of the IRC, 26 U.S.C.A. §501(c)(3). Tr. pp. 59, 60; Applicant Group Ex. 2 (IRS letter dated 8/21/80). However, the fact that an organization has been granted a letter of exemption from Federal income taxes is not determinative of the issue of whether the property of an organization claiming exemption from real estate taxes qualifies for Illinois tax purposes. People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450 (1970); Clark v. Marian Park, Inc., 80 Ill. App. 3d 1010 (1980).

for which the subject property was used during 2002, was charitable. Under such circumstances, the Applicant has presented insufficient evidence to conclusively establish that it qualifies as an “institution of public charity” within the meaning of section 15-65 of the Property Tax Code (35 **ILCS** 200/15-65).<sup>3</sup>

The Applicant has identified the Lucky Strike Restaurant and the Quadrangle Club, which operate for profit (Applicant Group Ex. 11) and on exempt property owned by the University of Chicago (Applicant Group Ex. 4) as evidence that the Department has exempted facilities identical to the subject property. While the record does not indicate the facts relied upon as a basis for the receipt of these exemptions, property owned by colleges and universities ordinarily will qualify for exemption if they meet the requirements of section 15-35 of the Property Tax Code (35 **ILCS** 200/15-35). See Wheaton College v. Department of Revenue, 155 Ill. App. 3d 945 (2d Dist. 1987); People ex. rel. Lloyd v. University of Illinois, 359 Ill. 369 (1934); People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944); Northern Illinois University Foundation v. Sweet, 237 Ill. App. 3d 28 (2d Dist. 1992); Illinois Institute of Technology v. Skinner, 49 Ill. 2d 57 (1971); Knox College v. Board of Review of Knox County, 308 Ill. 160 (1923).

The Applicant is not seeking exemption from property tax as a school pursuant to 35 **ILCS** 200/15-35 but, rather, seeks to rely upon 35 **ILCS** 200/15-65 governing the

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<sup>3</sup>See Forest Preserve District of Du Page County v. Department of Revenue, 266 Ill. App. 3d 264, 270 (2d Dist. 1994) (“It is well established that statutes granting tax exemptions on property must be strictly construed in favor of taxation ... and that the party claiming an exemption has the burden to prove clearly and conclusively that it is entitled to exemption[.]” citing Telco Leasing, Inc. v. Allphin, 63 Ill. 2d 305, 310 (1976).

qualification of charities for exemption. Accordingly, the use of the Applicant's income producing property primarily for educational purposes, and other issues presented in applying the exemption allowed for properties owned by universities in applying section 35 **ILCS** 200/15-35 are not before me. Moreover, due to the differences between the criteria for exemption under 35 **ILCS** 200/15-35, as evident from the cases construing this exemption and the criteria for applying 35 **ILCS** 200/15-65, which is at issue in this case, the exempt status of property owned by the University of Chicago cannot be relied upon as a basis for concluding that the property at issue should be excluded from the property tax rolls.

Because the Applicant has failed to establish that it is an institution of public charity, the question whether the subject property was primarily used for charitable purposes in 2002 has become technically moot. However, even if the question of charitable use were not mooted by the Applicant's failure to establish charitable ownership, the subject property would still not qualify for exemption because the Applicant has also failed to conclusively establish that the subject property was used exclusively for charitable purposes as is also required by section 15-65 of the Property Tax Code (35 **ILCS** 200/15-65). In reaching this conclusion, it should be noted that the word "exclusively," when used in Section 15-65 means "the primary purpose for which property is used and not any secondary or incidental purpose." Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App. 3d 186, 190 (4<sup>th</sup> Dist. 1993).

In this case, Barbara Revak, the chief operating officer of the Ridgeland Corporation, testified that, at the direction of the Applicant, the corporation allowed some community groups and charities to use the basement and first floor of the subject property

at no charge. Tr. pp. 68, 78-85. However, she also testified that, during 2002, these facilities were rented for family reunions, wedding receptions, and holiday and anniversary parties. Tr. pp. 91–101. When the building was rented for such purposes, the charge was between \$175 and \$3,850, depending upon the nature of the use involved. Applicant Group Ex. 3 (F). She further testified that the decision to permit free rentals rested solely in the discretion of the Applicant’s governing board. Tr. p. 68. The record also shows that gross receipts from the lease or license of the subject property were \$65,000 in 2002. Applicant Group Ex. 3 (A-2).

During her testimony, Ms. Revak also testified as follows:

It was the aspiration that the Ridgeland Corporation would be able to run the Ridgeland Club facility in a way to generate net income that would, in turn, be turned over to the United Legal Foundation, which would then permit the United Legal Foundation to do more of the community kind of work, which would also, of course, generate more business for the Ridgeland Corporation.  
Tr. p. 78

The Illinois Courts have held that the question of whether property is being used with a view to a profit depends on the intent of the owner. Coles-Cumberland Professional Development Corporation v. Department of Revenue, 284 Ill. App. 3d 351, 354 (4<sup>th</sup> Dist. 1996). It is clear from the foregoing testimony that the intent of the Applicant from the inception of the Applicant’s ownership was to utilize the subject property to produce income. The Illinois Courts have consistently held that the use of property to produce income is not an exempt use. People ex rel. Baldwin v. Jessamine

Withers Home, 312 Ill. 136 (1924); The Salvation Army v. Department of Revenue, 170 Ill. App. 3d 336 (2d Dist. 1988).<sup>4</sup>

The record in this case also shows that all proceeds from the rental of the subject property's ballroom, meeting room and other facilities realized by the Ridgeland Corporation were to be turned over to the Applicant for use in its charitable activities. Tr. pp.78, 84-87; Applicant Group Ex. 3 (C-2). However, even where such use of proceeds is found, the use of property to produce income is still sufficient to render such property non-exempt. *Id.*

Ms. Revak also testified that expenses attendant to the operation of the subject property's facilities available for rental exceeded revenues in 2002, resulting in a loss from such operations, and that the subject property has never produced a profit in its entire existence. Tr. p. 112. However, the courts have held that, so far as its liability for taxes is concerned, it is immaterial whether the owner of property used to produce income actually makes a profit or sustains a loss. Turnverein "Lincoln" v. Board of Appeals, 358 Ill. 135 (1934).

Here, the Applicant has attempted to show that the subject property was used primarily for the purpose of accommodating community groups and charities. However, the record shows that the decision to allow free use was strictly discretionary. Tr. p. 68. The lack of uniformity inherent in discretionary business judgments made by the

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<sup>4</sup> While the Ridgeland Corporation, which was formed to run the subject property for the Applicant, is organized as a "for profit" corporation, the Applicant argues that this status should be given little weight in determining whether the property the Ridgeland Corporation administered for the Applicant was used for profit. The Applicant contends that the main reason the Ridgeland Corporation was set up as a "for profit" corporation was to enable the subject property to obtain a liquor license. Tr. pp. 34-48. However, as correctly pointed out by the Department (Tr. p. 149), the subject property's actual operations, rather than the Ridgeland Corporation's corporate status, is the determinative factor in reaching a conclusion regarding the "for profit" use of the subject property.

Applicant's Board regarding rental waivers, and evidence of substantial gross receipts generated from the rental of the subject property (\$65,000) far exceeding the amount waived for the eight community or charity group events during 2002 (Applicant Group Ex. 3(D)) assuming the maximum rental charge pursuant to Group Exhibit 3(F) of \$3,850, (a total of \$30,800), raise doubts as to whether the "primary" use of the subject property's facilities available for rental was for charities. Further doubts in this regard are raised by testimony indicating that the goal of the Applicant was to rent the subject property for profit. Under Illinois law, such doubts must be resolved in favor of taxation. People Ex Rel. Nordland v. Association of the Winnebago Home for the Aged, 40 Ill. 2d 91, 99-100 (1968) ("The burden of proving the right to exemption is upon the party seeking it, and in determining whether property is included within the scope of an exemption, all facts are to be construed and all debatable questions resolved in favor of taxation[.]").

Simply stated, it is unclear from the record whether the subject property was used: (1) primarily for purposes of use by charities at no fee and incidentally for rental for profit; or (2) primarily for rental for profit and incidentally for use by charities. Under these circumstances it would be improper to conclude that the subject property was used exclusively for charitable purposes. *Id.*<sup>5</sup>

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<sup>5</sup> The courts have held that where an identifiable portion of property is used for an exempt purpose, while the remainder is used primarily for non-exempt purposes, the portion used for exempt purposes (e.g. as administrative offices of a charity) qualifies for exemption. City of Mattoon v. Graham, 386 Ill. 180 (1994). However, the issue whether the portion of the subject property used by the Applicant for administrative purposes is exempt has not been raised and is not presented here. Moreover, even if this issue were before me, the Applicant's failure to prove that it is a charity would, in any event, preclude a finding in the Applicant's favor based on the record in this case.

The Appellate Court's holding in Lena Community Trust Fund, Inc. v. Department of Revenue, 322 Ill. App. 3d 884 (2<sup>nd</sup> Dist. 2001), a case upon which the Applicant seeks to rely (Tr. pp. 129, 130), does not alter any of the preceding conclusions. In Lena, the Applicant, a Trust, owned certain real property upon which it built a community center, charging various fees for the use of space therein. *Id.* at 885-6. The space was used by a number of private and public entities for private and public purposes. *Id.* at 886. The Appellate Court determined that the Trust was a charitable institution and that the primary use of that property was charitable, thereby granting the exemption.

The facts in Lena are significantly different from those herein. In Lena, “the Trust collected 81% of its revenues from donations and 19% from rental fees.” *Id.* at 886. In the instant case, there is no evidence in the record that the Applicant received any fees from donations during 2002, the tax year in controversy. Indeed, based on the record before me, I can only conclude that the Applicant's sole revenue source during that year was from for profit rentals of the subject property.

Moreover, the court in Lena found that the primary use of the property at issue there was as a community resource. *Id.* It noted that its “analysis might change” if there were evidence that “the Trust gave priority to business uses over civic groups and community events in allocating the space or if there were indications that the Trust had profited from the business uses.” *Id.* at 891. In this matter, testimony in the record indicates that the Applicant's primary purpose in owning the subject property was to commercially rent or lease space in it to generate a profit. Tr. p. 78. Based on the aforementioned testimony, I conclude that the Applicant's preferred use of the subject

property was for rental to persons having the ability to pay for the property's use. It appears from the record that the Applicant intended to use its rental of the property to generate income from the operation of the subject property as a business, and that such revenue was indeed generated, although not enough to cover all of the subject property's costs of operation. Based upon the above, the Applicant's attempt to favorably compare itself to the Trust in Lena is unpersuasive and its reliance on that decision is misplaced.

In sum, I conclude that while the Applicant owned the parcels at issue during 2002, it failed to establish that it was a charitable organization, or that it used the building on this parcel primarily for charitable purposes during that year. I therefore recommend that Cook County Parcels number 20-25-124-010 through 20-25-124-014 remain on the tax rolls for the 2002 assessment year, and be assessed to the Applicant.

Ted Sherrod  
Administrative Law Judge

Date: September 9, 2005